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Judge blocks Kentucky law on tobacco payments

STATE, BIG COMPANIES HOPE TO LIFT RULING

ASSOCIATED PRESS

LOUISVILLE - A federal judge has issued a temporary ruling in favor of small, discount tobacco companies in Kentucky.

U.S. District Judge Joseph M. Hood's decision this week blocked part of a 2004 law that attempts to change how certain cigarette makers pay into state escrow accounts.

The small companies had argued that changing the law raises their costs, giving larger tobacco firms a major competitive advantage.

Hood's ruling will stay in place until a federal judicial panel decides whether to consolidate the Kentucky case and similar lawsuits in Tennessee and Oklahoma and move them to a New York

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"This certainly is a good development in our favor if it's able to stand," said Steven Price, general manager of Lexington's YTC tobacco company, a nine-person firm that sells discount cigarettes.

Louisville's North Atlantic Cigarette Co. also would be affected by changes to the escrow payment law.

The state is hoping to get Hood's stay lifted and opposes moving the case to New York, said Michael Plumley, Kentucky's assistant attorney general.

"We don't feel like that's the right type of forum for this case because it deals with individual state law," Plumley said.

Under the 1998 settlement with 46 states, major tobacco companies agreed to pay more than \$200 billion to the states over 25 years to settle lawsuits over smoking-related illnesses.

Manufacturers either joined the settlement or, for those who chose not to participate, agreed to pay into escrow accounts to cover any future litigation.

The formula used to determine escrow payments was based on national sales, so cigarette makers that concentrate on regional markets were able to get a significant refund of escrow money.

Big Tobacco argued that the provision was a loophole giving discount tobacco companies a competitive advantage.

Discount cigarette companies have maintained that the provision was an intended part of the settlement and unsuccessfully argued last winter that any change in the Kentucky law would force them to pay as much as the major cigarette makers.

Non-participating manufacturers were able to get \$40 million of the \$43.5 million they deposited into escrow last April, Plumley said.

Under the law passed by the General Assembly in 2004, those companies would stand to get less than 10 percent of their escrow payments returned, he said.